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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

) Case No.
ABANTE ROOTER AND)
PLUMBING, INC., individually and on	) <u>CLASS ACTION</u>
behalf of all others similarly situated,)
Plaintiff,	) COMPLAINT FOR VIOLATIONS
	) OF:
vs.)
	) 1. NEGLIGENT VIOLATIONS
	) OF THE TELEPHONE
	) CONSUMER PROTECTION
HURRICANE TAX, LLC and DOES 1	) ACT [47 U.S.C. §227(b)]
through 10, inclusive, and each of them,	) 2. WILLFUL VIOLATIONS
	) OF THE TELEPHONE
	) CONSUMER PROTECTION
Defendant.	) ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
 individually and on behalf of all others similarly situated, alleges the following
 upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of HURICANE TAX, LLC
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiff’s
10 claims arise under a law of the United States, the TCPA.

11 3. Venue is proper in the United States District Court for the Northern
12 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial portion
13 of the events giving rise to Plaintiff’s claims occurred within this District.

14 **PARTIES**

15 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
16 is a corporation of the State of California, whose principal place of business is in
17 the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

18 5. Defendant, HURRICANE TAX, LLC (“Defendant”) is a tax services
19 company, and is a “person” as defined by 47 U.S.C. § 153 (39).

20 6. The above named Defendant, and its subsidiaries and agents, are
21 collectively referred to as “Defendants.” The true names and capacities of the
22 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
23 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
24 names. Each of the Defendants designated herein as a DOE is legally responsible
25 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
26 Complaint to reflect the true names and capacities of the DOE Defendants when
27 such identities become known.

28 7. Plaintiff is informed and believes that at all relevant times, each and

every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning on or about September 6, 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone numbers ending in -0106 and -5154, in an attempt to solicit Plaintiff to purchase Defendant's services.

9. When Plaintiff answered the phone, it heard a long pause followed by a clicking noise indicative of an automated telephone dialing system.

10. Defendant used an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

11. Defendant contacted or attempted to contact Plaintiff from telephone numbers 925-828-4049 and 813-489-9986, confirmed to be Defendant's numbers.

12. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14. These calls by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).

CLASS ALLEGATIONS

15. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the proposed class ("The Class").

16. The class is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint through to the date of class certification

7 17. Plaintiff represents, and is a member of, The Class, consisting of all
8 persons within the United States who received any telephone calls from Defendant
9 to said person's cellular telephone made through the use of any automatic telephone
10 dialing system or an artificial or prerecorded voice and such person had not
11 previously not provided their cellular telephone number to Defendant within the
12 four years prior to the filing of this Complaint.

13 18. Defendant, its employees and agents are excluded from The Class.
14 Plaintiff does not know the number of members in The Class, but believes the
15 members number in the thousands, if not more. Thus, this matter should be
16 certified as a class action to assist in the expeditious litigation of the matter.

17 19. The Class is so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Class
19 members are unknown to Plaintiff at this time and can only be ascertained through
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
21 The Class includes thousands of members. Plaintiff alleges that The Class
22 members may be ascertained by the records maintained by Defendant.

23 20. Plaintiff and members of The Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
25 and The Class members via their cellular telephones thereby causing Plaintiff and
26 The Class members to incur certain charges or reduced telephone time for which
27 Plaintiff and The Class members had previously paid by having to retrieve or
28 administer messages left by Defendant during those illegal calls, and invading the
privacy of said Plaintiff and The Class members.

1 21. Common questions of fact and law exist as to all members of The
2 Class which predominate over any questions affecting only individual members of
3 The Class. These common legal and factual questions, which do not vary between
4 The Class members, and which may be determined without reference to the
5 individual circumstances of any members, include, but are not limited to, the
6 following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant made any telemarketing/solicitation call
9 (other than a call made for emergency purposes or made with
10 the prior express consent of the called party) to a member of
11 The Class using any automatic telephone dialing system or any
12 artificial or prerecorded voice to any telephone number
13 assigned to a cellular telephone service;
- 14 b. Whether Plaintiff and The Class members were damaged
15 thereby, and the extent of damages for such violation; and
- 16 c. Whether Defendant should be enjoined from engaging in such
17 conduct in the future.

18 22. As a person that received numerous telemarketing/solicitation calls
19 from Defendant using an automatic telephone dialing system or an artificial or
20 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
21 claims that are typical of The Class.

22 23. Plaintiff will fairly and adequately protect the interests of the members
23 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
24 class actions.

25 24. A class action is superior to other available methods of fair and
26 efficient adjudication of this controversy, since individual litigation of the claims
27 of all The Class members is impracticable. Even if every member of The Class
28 could afford individual litigation, the court system could not. It would be unduly

1 burdensome to the courts in which individual litigation of numerous issues would
 2 proceed. Individualized litigation would also present the potential for varying,
 3 inconsistent, or contradictory judgments and would magnify the delay and expense
 4 to all parties and to the court system resulting from multiple trials of the same
 5 complex factual issues. By contrast, the conduct of this action as a class action
 6 presents fewer management difficulties, conserves the resources of the parties and
 7 of the court system, and protects the rights of each member of The Class.

8 25. The prosecution of separate actions by individual members of The
 9 Class would create a risk of adjudications with respect to them that would, as a
 10 practical matter, be dispositive of the interests of the other members of The Class
 11 not parties to such adjudications or that would substantially impair or impede the
 12 ability of such non-party members to protect their interests.

13 26. Defendant has acted or refused to act in respects generally applicable
 14 to The Class, thereby making appropriate final and injunctive relief with regard to
 15 the members of The Class as a whole.

16 **FIRST CAUSE OF ACTION**

17 **Negligent Violations of the Telephone Consumer Protection Act**

18 **47 U.S.C. §227(b).**

19 **On Behalf of The Class**

20 27. Plaintiff repeats and incorporates by reference into this cause of action
 21 the allegations set forth above at Paragraphs 1-26.

22 28. The foregoing acts and omissions of Defendant constitute numerous
 23 and multiple negligent violations of the TCPA, including but not limited to each
 24 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular
 25 47 U.S.C. § 227 (b)(1)(A).

26 29. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
 27 Plaintiff and The Class Members are entitled an award of \$500.00 in statutory
 28 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

30. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of The Class

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-26.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

33. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

34. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 16th Day of October, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff